

REMARKS:

Claims 1-12 are pending in the subject application and are subject to a restriction requirement. By the enclosed Preliminary Amendment, newly added dependent claims 13-20 are also pending in the subject application and are believed applicable and subject to the restriction requirement as set forth herein.

Requirement for restriction under 35 U.S.C. 121

In the Office Action, the Examiner required restriction under 35 U.S.C. § 121 to one of the following allegedly independent and distinct inventions:

1. Claims 1-10 drawn to a polynucleotide comprising an immunostimulatory tag shown in Table 1 of the specification, and encoding a factor; an array of probes comprising the polynucleotide, a host cell, and a gene delivery vehicle, classified in class 435 subclass 287.2
2. Claims 11 and 12 drawn to a method of inducing an immune response in a subject comprising administering a polynucleotide comprising an immunostimulatory tag and encoding a factor, classified in class 514 subclass 44.

Request for Reconsideration of Restriction Requirement under 37 C.F.R. §1.143

Applicants respectfully request a reconsideration and modification of this restriction requirement.

As stated by the Office, there are two criteria for a proper requirement for restriction between patentably distinct inventions, MPEP 803. First, the inventions must be independent or distinct. Second, there must be a serious burden on the Examiner if restriction is required. The Examiner must examine the subject application on the

merits even if it includes claims to distinct inventions if such an examination can be made without serious burden.

The Office operates a policy wherein 10 nucleotide sequences constitute a reasonable number for examination purposes, MPEP § 803.04. This allows for the examination of up to ten independent and distinct sequences in a single search without restriction.

"It has been determined that normally ten sequences constitute a reasonable number for examination purposes. Accordingly, in most cases, up to ten independent and distinct nucleotide sequences will be examined in a single application without restriction." MPEP § 803.04

Under this policy, the instant restriction requirement to a single tag for the search of claims 1-10 is not consistent with stated Patent Office policy. (Note, the Office has recently instituted a policy directed to improving restriction practice within TC 1600 as stated by the recent publication of the TC1600 Restriction Practice Action Plan [press release on October 6, 2003]. This policy emphasizes the importance of the quality and consistency of restriction practice and recognizes the need for improvements in this complex technology unit.)

Applicants therefore respectfully request the modification of the restriction requirement to allow for the search of the following seven nucleotide sequences represented here with the factor name and corresponding SEQ ID NOs from Table 1 of the instant application: PARC (SEQ ID NO: 28), TARC (SEQ ID NO. 4), MCP-2 (SEQ ID NO: 580), MCP-4 (SEQ ID NO. 263), MDC (SEQ ID NO: 23), ecalectin (SEQ ID NO: 258), and eotaxin 3 (SEQ ID NO: 17).

In anticipation of the modification of the restriction requirement as requested above, Applicants hereby elect without traverse Group I (claims 1-10) with an additional election of the sequences PARC (SEQ ID NO: 28), TARC (SEQ ID NO. 4), MCP-2 (SEQ ID NO: 580), MCP-4 (SEQ ID NO. 263), MDC (SEQ ID NO: 23), ecalectin (SEQ ID NO: 258), and eotaxin 3 (SEQ ID NO: 17). Applicants respectfully assert that newly added dependent claims 13-20 should be properly considered in Group I.

As set forth in the accompanying Preliminary Amendment, these newly added dependent claims do not add any new matter but are useful to clarify the inventive features of the instant invention. They further define the subject matter of originally presented claims 1 and 7. It is for this reason that they should be properly included within Group I.

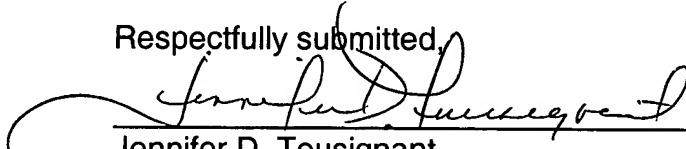
In the event the Office does not apply MPEP § 803.04, Applicants provisionally elect with traverse Group I (claims 1-10) with a further election of PARC (SEQ ID NO: 28). As stated above, Applicants respectfully assert that dependent claims 13-20, newly added by the enclosed Preliminary amendment, should be properly considered in Group I. Applicants further reserve the right to petition from requirement for restriction under 37 C.F.R. §1.144 if this requirement is not modified and is made final by the Examiner.

SUMMARY:

No fee is deemed necessary in connection with the filing of this communication. However, if any fee is required, authorization is hereby given to charge the amount of any such fee to Deposit Account No. 07-1074.

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Date

Respectfully submitted,


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